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SUBJECT: BILL COULD WEAKEN INDONESIA'S CORRUPTION  
ERADICATION COMMISSION

REF: JAKARTA 1281 AND PREVIOUS

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¶1. (U) This message is Sensitive but Unclassified.

¶2. (SBU) SUMMARY: Parliament is debating a new bill that would strip Indonesia's Corruption Eradication Commission (KPK) of its prosecutorial powers, rendering the KPK an investigative and preventative organization. Although this legislation--and another draft bill under review--could be detrimental to the KPK as an institution, it does not signal an end to corruption prosecutions, as the Attorney General's Office (AGO) would pick up the prosecutorial load. Nevertheless, the anti-corruption NGO community is dissatisfied with the bill, as other provisions in the new anti-corruption bill could hamper Indonesia's corruption eradication efforts. END SUMMARY.

#### CORRUPTION CRIME BILL

¶3. (SBU) To fulfill international obligations, Indonesia's Parliament is deliberating a new corruption law. Parliament was obligated to draft a revised Corruption Crime Law after the GOI signed the United Nations Convention Against Corruption (UNCAC) in 2003. Parliament passed a law on UNCAC ratification in 2006. Indonesia currently has two corruption related laws: the 2001 Anti-Graft Law and the 2002 Law on the Corruption Eradication Commission.

#### NEW BILL TO STRIP THE KPK OF PROSECUTORIAL POWERS

¶4. (SBU) The latest bill, in combination with draft legislation regarding the Anti-Corruption Court (ACC), represent a parliamentary effort to circumscribe the KPK's powers. (Note: Established in 2002, the ACC's mandate was to handle cases involving high-level government officials, significant losses to the state, or strong public interest. The ACC only hears cases brought by the KPK. In 2006, the Constitutional Court declared that the ACC was unconstitutional and gave Parliament until December 2009 to pass a revised law on the body. Although Parliament is debating this bill, observers are not optimistic that Parliament will pass the bill in time.)

¶5. (SBU) The new bill would strip the KPK of its prosecutorial powers. The KPK would still be authorized to engage in preventive anti-corruption measures. In the government version of the bill, the prosecution and hearing of corruption cases would be conducted according to the

Criminal Procedure Code Law. The Criminal Procedure Code stipulates that the National Police are responsible for the investigation of crimes and that prosecutors from the Attorney General's Office (AGO) are responsible for prosecuting crimes. Although the KPK would be permitted to investigate cases, they would need to hand the cases to the AGO for prosecution.

#### ATTORNEY GENERAL'S OFFICE COULD PICK UP CASE LOAD

¶6. (SBU) The Attorney General's Office (AGO) could pick up the prosecutorial load. With USG assistance in June 2008, the AGO formed a 50-prosecutor task force dedicated to prosecuting corruption crimes, whose members were chosen through a highly competitive and transparent interview process. Given the KPK's 100% conviction rate (a rate that the AGO has yet to match), many corruption watchers are fearful that the AGO would be unable to garner the same success as the KPK. Head of the task force and Deputy Attorney General for Special Crimes Marwan Effendy has noted that the greatest hurdle for the AGO in prosecuting corruption cases was overcoming the number of approvals required to bring corruption cases, an institutional barrier he has worked to overcome.

#### NGO'S DISSATISFIED WITH GOVERNMENT VERSION

¶7. (SBU) The anti-corruption NGO community is dissatisfied with the GOI's version of the bill. Indonesia Corruption Watch (ICW) coordinator Emerson Yuntho has said the GOI version of the bill would weaken Indonesia's corruption eradication efforts and has publicly advocated for its revision. In order to instruct the deliberations, the NGO community has written a counter-draft of the anti-corruption bill.

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¶8. (SBU) The NGO community identified more than twenty problems with the government version of the bill. The government draft did not stipulate minimum or maximum sentences for corrupters, giving judges discretion to issue lenient sentences. Corrupters embezzling less than approximately \$2,500 who agree to return the money could avoid criminal charges. The government version also failed to address how to recover state losses, which could allow for the possibility of unrecovered embezzled funds. The lack of witness and whistleblower protection in the current version would allow a complainant to be sued by a corruption defendant.

#### CORRUPTION BILL COULD HAMPER ANTI-CORRUPTION EFFORTS

¶9. (SBU) This corruption bill, as written, could roll back much of the anti-corruption progress made by Indonesia in the last few years. Although the AGO could pick up the cases not prosecuted by the KPK, no institution can overcome structural inadequacies in the law, according to ICW. The NGO version of the bill seeks to close these holes in the legislation. Unlike the ACC bill, there is no time constraint on the Corruption bill, which gives Parliament time to draft a good amendment to the current corruption laws.

HUME